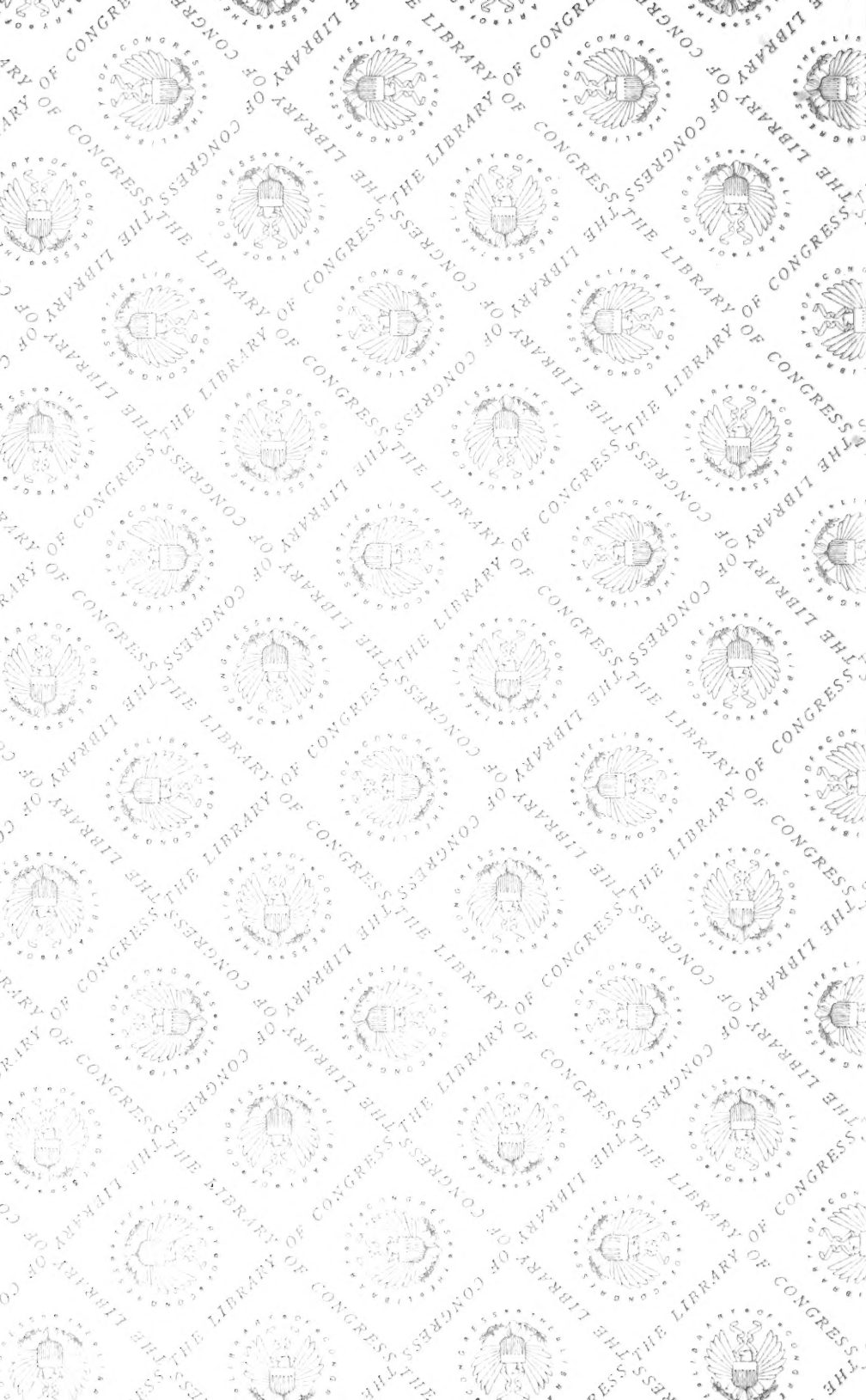
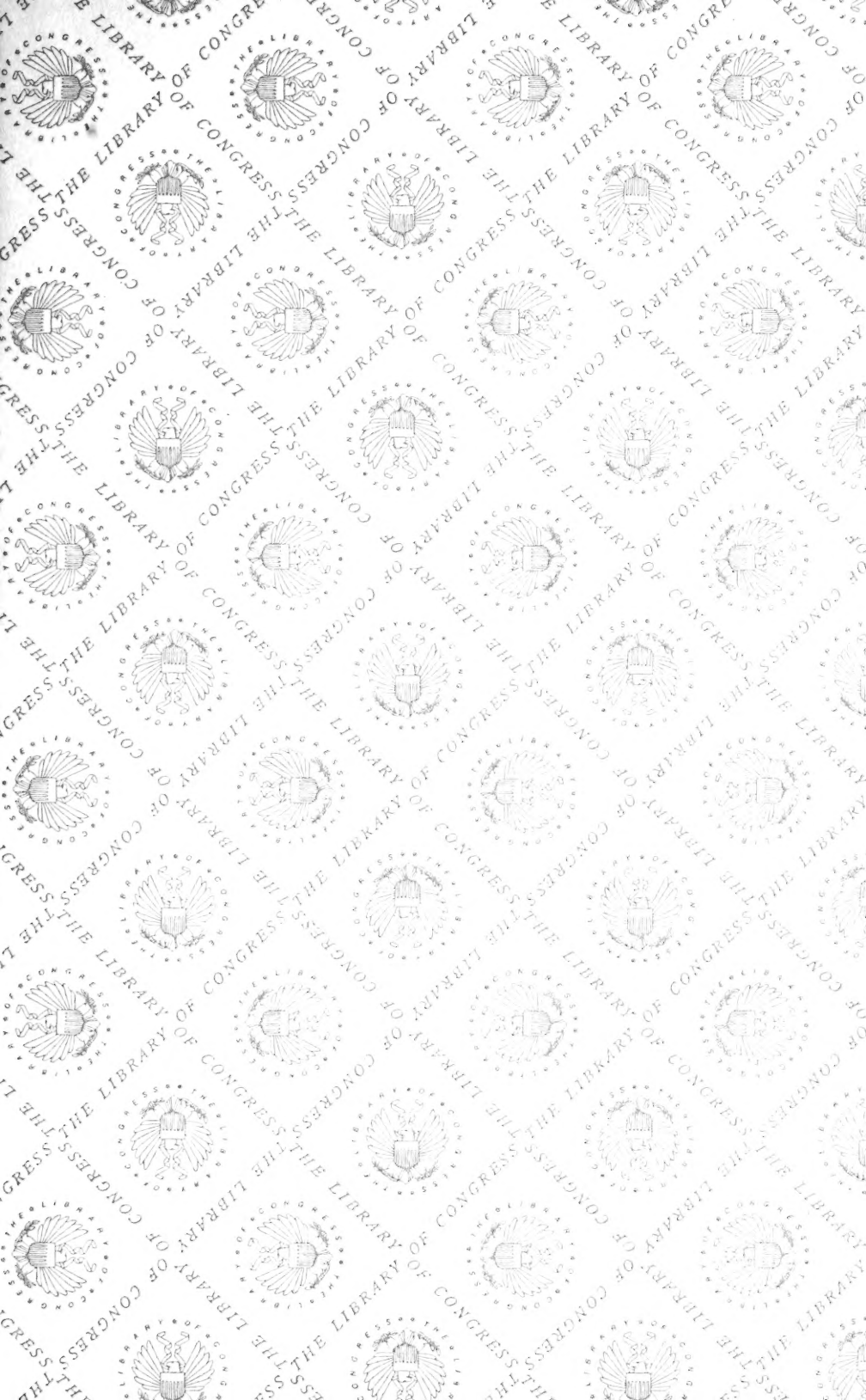
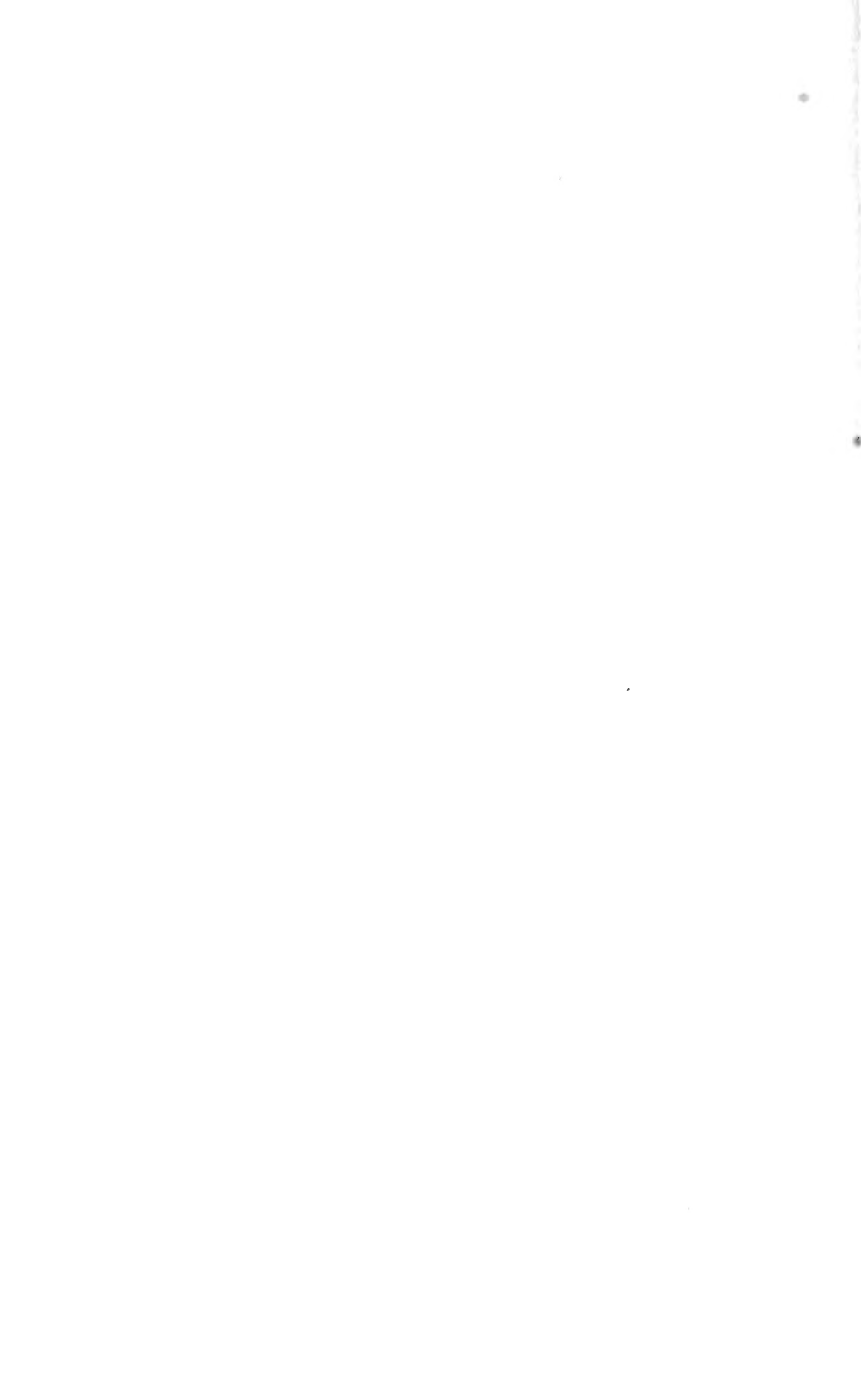


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CORNELL UNIVERSITY

AGRICULTURAL EXPERIMENT STATION OF THE
NEW YORK STATE COLLEGE OF AGRICULTURE

BEVERLY T. GALLOWAY, Director

Department of Forestry

FOREST LEGISLATION IN AMERICA PRIOR TO MARCH 4, 1789

BY J. P. KINNEY

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FOREST LEGISLATION IN AMERICA PRIOR TO MARCH 4, 1789¹

J. P. KINNEY

INTRODUCTION

When the writer formed the resolution, several years ago, to write a history of the development of forest law in America, he believed that the whole period previous to the nineteenth century could be covered in a dozen pages. From the time when he began the study of forestry, in the first year of the twentieth century, the one thought that had been dominant in American forestry literature was the novelty of the propaganda for forest preservation and extension in America. A few older men knew that the need of forest conservation had been evident for a long time, but the younger students of forestry derived their ideas largely from the publications emanating from the nascent Bureau of Forestry in the national Department of Agriculture. A national conviction as to the need of forest management was developing. The new life in the Nation outshone the previous activities of the individual States.

Several writers on the development of forestry in America had mentioned a few instances of early legislation in the States or the colonies, and, either by direct statement or by implication, had suggested that these early enactments were only sporadic manifestations of the spirit of forest conservation. In searching for other instances, the writer soon found that forestry and timber problems had claimed the attention of colonial legislative bodies on many occasions during the seventeenth century, and that hundreds of such laws had been enacted previous to the establishment of the National Government. Long before the Federal Constitution became effective — on March 4, 1789 — the legislatures of most of the colonies had realized that forest fires constituted a great menace to the welfare of the people, and modern trespass laws and regulations of the lumber industry have their forerunners in the legislation of the seventeenth and eighteenth centuries. The influence of American forests in the development of the spirit of opposition to Great Britain that culminated in the Revolution of 1776 has not been given its due importance by political and economic writers, nor has it been known that certain developments of forest regulation in the colonies were strikingly anticipatory of recent movements in national forest policy.

¹ A part of a study presented to the Faculty of the Graduate School of Cornell University in partial fulfillment of the requirements for the degree of master in forestry.



LEGISLATION REGARDING FOREST FIRES

IN MASSACHUSETTS

THE PLYMOUTH COLONY

On December 21, 1620, the Pilgrims made their first landing at Plymouth Bay, on the east coast of Massachusetts. In the following January they transferred their effects from the *Mayflower* to the rude cabins which they had constructed, and began the task of building a colony on the forested shores of New England.

Only meager records of their activities are left; yet it is known that the clearing of the forest must have progressed rapidly, for on March 29, 1626, the legislative authority for the Plymouth Colony passed an ordinance reciting the inconveniences that are likely to arise in any community from a lack of timber, and declaring that no man should sell or transport any timber whatsoever out of the colony without the approval of the governor and council. Any violation of this ordinance was to be punished by a forfeiture of the timber and by a fine of twice its value for the benefit of the Plymouth Company.² The crude and limited means of transportation available at that time made it imperative that a supply of timber for local uses be maintained near the colony, and justified the imposition of restrictions on the uses which the individual should be permitted to make of timber growing on common lands.

Nor was the ax of the ambitious pioneer the only menace to the forests surrounding the newly founded colony. As early as 1633 loss had been occasioned through the indiscreet firing of the woods; and in that year the setting of such fires was forbidden between the months of September and March under penalty of the payment of all damages resulting, and the firing of the woods during the remaining months was permitted only on condition that due warning be given to all neighbors.

On September 4, 1638, the setting of fires was forbidden except between February 1 and April 15, and a forfeit of ten shillings, or a whipping as an alternative, was fixed for the offense of firing the woods without just cause. This law was reenacted on October 20, 1646. The revised laws of September 29, 1658, forbade any one to fire the woods, even though he had just occasion therefor, without giving warning to his neighbors, fixed the open season for firing between February 15 and "the latter end of April," and kept the penalty of ten shillings or a whipping for an unjustified firing. These provisions were retained in substantially the same form in the revised laws of the colony as published in 1672.

² The various laws referred to in this bulletin are contained in full in the works listed on pages 403-405.

Under the new charter granted by King William and Queen Mary in 1691, the Plymouth Colony became a part of the Province of Massachusetts Bay.

THE MASSACHUSETTS BAY COLONY

In the records of the Massachusetts Bay Colony is found an order against the setting of fires, of an even earlier date than the first order at Plymouth. On July 26, 1631, the court of the colony, founded by John Endicott and his associates in 1628, forbade the burning of any ground prior to the 1st of March under pain of payment of full damage and such penalty as the court should see fit to inflict.

An act of November 5, 1639, in this colony imposed a fine of forty shillings, in addition to the satisfaction of all damages, on any one who should set fire on another's ground or on common ground. Whipping or other corporal punishment was to be inflicted if the offending party, whether man or woman, was unable to pay the fine or satisfy the damages. The act excepted from its penalties those who burned ground for needful or fit purposes in March or April, but made persons setting fire on their own lands liable for the damage caused others through the escape of the fire.

An act of November 4, 1646, in the Massachusetts Bay Colony, read as follows:

Whosoev'r shall kindle any fires in ye woods before ye 10th day of ye first mo., or after ye last day of ye 2d mo., or on ye last day of ye weeke, or Lord's day, shall pay all damages yt any p'son shall lose thereby, or halfe so much to ye common treasury.³

The provisions of the act of 1646, with minor modifications as reenacted in 1652, remained the law in the Massachusetts Bay Colony until the creation of the Province of Massachusetts Bay in 1691, and for more than a half century thereafter. An act of May 30, 1679, made the law against the setting of fires in the woods applicable to Indians also.

THE PROVINCE OF MASSACHUSETTS BAY

An act of January 15, 1743, in the Province of Massachusetts Bay, specifically recognized the damage caused by fire to young tree growth and to the soil. This act imposed a penalty of forty shillings, for the

³ Prior to January 1, 1752, the English people, in conformity with the Jewish chronology adopted in the Julian Calendar, were accustomed to consider the civil year as beginning on March 25 instead of on January 1, the first day of the Gregorian Calendar. During the early colonial period it was rather common, in writing any date falling between January 1 and March 24 inclusive, to include the last digit or the last two digits of the numbers expressing both the Gregorian calendar year in which this date fell and the preceding year. Thus January 5, 1653-4, and March 24, 1709-10, would denote respectively January 5, 1654, and March 24, 1710, according to the present system of chronology. However, this practice was not uniform, even in the same colony, and it is sometimes impossible to determine in which of two successive years any event took place which is recorded as occurring between January 1 and March 24. So also, in denoting the months by ordinal numerals, some writers called January the first month while others considered March the first month. Occasionally a thoughtful chronicler has added after the numeral the name of the month. It is probable that the act of November 4, 1646, cited above, considered March the first month.

benefit of the person suing for it, in addition to a liability for all damages, on any one who should willingly set fire in any woods or land lying in common within any town unless he were duly licensed by a majority vote of the town or the proprietors. The act held parents and masters liable for such damages caused by minors or servants unless satisfactory proof was presented that the minor or the servant was employed by some other person to accomplish the burning, in which case that person became liable for damages and the penalty. If towns or proprietors desired to burn lands, they must give reasonable notice within the towns where the lands were situated and also to the selectmen of adjacent towns. Because of the difficulties attendant on proof of the unlicensed setting of fires, the act provided that upon oath of the plaintiff or other creditable witness that fire had been kindled, and the presentation of circumstances making it appear highly probable that the defendant had set the fire or had caused it to be set, judgment should be given unless the defendant acquitted himself by oath, in which case he was to have costs against the plaintiff. This act was limited to three years, but subsequent acts continued it in substantially the same form until November 1, 1797.

Section 4 of a general trespass act of March 11, 1785, reenacting the substance of several separate acts passed before the institution of the Articles of Confederation, provided that if any one should willfully and maliciously make a fire with design to communicate the same to the soil, grass, trees, poles, or underbrush of another, or should willfully and maliciously suffer any fire so to communicate as to cause damage to the other to the amount of ten pounds, he should, on conviction, be fined, imprisoned, confined to hard labor, or bound to good behavior, or all of said punishments, according to the nature and aggravation of the offense.

IN NEW HAMPSHIRE

In 1639 the court at Exeter, New Hampshire, ordered that no one should fire the woods after the middle of April so as to destroy the feed of the cattle or do other hurt, under pain of paying the damages resulting.

The *General Lawes and Liberties of the Province of New Hampshire made by the General Assembly at Portsmouth, March 16, 1680*, contained a provision that no one should fire the woods between the 1st of March and the latter end of April, under penalty of making good all damages and paying a fine of ten shillings, or being set in the stocks.

IN CONNECTICUT

THE NEW HAVEN SETTLEMENTS

The revision of the laws of the New Haven Colony issued in 1644-45 provided for a fine of forty shillings, to be paid to the town by any one who should kindle a fire in his garden or any part of his house lot for the

burning of leaves, straw, cornstalks, or other rubbish, notwithstanding any excuse that he might make as to his care and attendance, the standing of the wind, or the calmness of the season.

The *New Haven Code of 1656* declared that if any one should set fire in the woods or grounds lying in common, or inclosed, so that any damage should result to another person, in any season or manner not allowed by the authority of the plantation, or on the last day of the week, or on the Lord's Day, he should pay to the plantation one and one-half times the damage caused, or, if unable to pay, be corporally punished. In 1662 the New Haven settlements were joined to the Connecticut Colony.

THE SETTLEMENTS ON THE CONNECTICUT RIVER

The *Code of Laws* of Connecticut Colony, published in 1650, forbade the setting of fires in the woods before the 10th day of the first month or after the last day of the second month, or on Saturday or Sunday, under penalty of one and one-half times the damage caused, or twenty stripes.

UNITED CONNECTICUT UNDER THE CHARTER OF 1662

A Connecticut act of May, 1733, repealed the former act regarding the firing of woods, and ordained that after August 10, 1733, any one firing the woods at any time of the year should be liable for all damages caused. The act threw the burden of proof of innocence on the defendant, but gave him double costs from the plaintiff if he established his innocence. The inhabitants of towns were permitted to burn their commons under agreement at town meetings, but they must pay all damages caused to others thereby. The Acts and Laws of Connecticut published in 1750 retained the provisions of the act of 1733.

IN RHODE ISLAND

On July 7, 1640, at Newport, Rhode Island, William Coddington, Governor, with the other assistants, agreed with the Sachem of Narragansett and the other sachems that if any Indian should build a fire at any time of the year on the lands of the Plantations and not extinguish the same on leaving it, and any damage should result, the damage should be adjudged and the Indian tried by the law of the Plantations.

On October 25, 1704, the General Assembly of Rhode Island and Providence Plantations forbade the setting of fires to burn the woods at any time "under any pretence whatsoever" other than from March 10 to May 10 of each year, or on Saturday or Sunday within this period. A violation of the act subjected the offender to a fine of thirty shillings, one-half to be paid to the complainant and one-half to the town; and an action in trespass for damages by the person injured was expressly authorized.

The penalty provided by the act of 1704 was increased to ten pounds by an act of August, 1722, with a proviso that if the offender had no personal estate with which to satisfy the fine he might be imprisoned for not over three months or be given a whipping of not over thirty-nine stripes.

An act of 1750 forbade the setting of fires "in the woods in any Part of this Colony, to run at large, at any Time or Times of the Year, under any pretence whatsoever" under penalty of fifty pounds for the first offence and one hundred pounds for the second, one-half to be paid to the informer and one-half to the poor of the town. The burden of proof of innocence was placed on the defendant and he was to be imprisoned if the fine were not paid.

IN NEW YORK

The *Duke's Laws* (published on March 1, 1665, subsequent to the capture of New Amsterdam by the English in 1664 under the direction of James, Duke of York) provided that if any one should kindle a fire in the woods or grounds lying in common, or in his own grounds so that the same should run into the lands of another, the offender should be liable for one and one-half times the damage caused, and in default of payment should be punished with twenty stripes or should do service to expiate the crime. The Dutch regained control of New York in 1673, but upon the reestablishment of the English government in the following year the Duke's Laws were again promulgated.

On November 25, 1710, a special act imposed a fine of forty shillings for the offence of firing "any uplands, plains, Woods, Trees, Shrubs, underwoods, or bushes" within the counties of Suffolk, Queens, Kings, and New York. The offender might be imprisoned for not over three months for failure to pay the fine, and he was to be liable for all damages. A similar special act of December 17, 1743, imposed a fine of five pounds, one-half to be paid to the informer and one-half to the poor fund, for firing the woods within the counties of Albany, Dutchess, and Suffolk, and in the Manor of Livingston, "at any time whatsoever," in addition to liability for all damages. The penalties of the act were applicable to one who set fire on his own land and allowed it to escape. This act empowered any person who should discover a fire in the woods of the counties or the manor named "to require and command all or any of the neighboring and adjacent inhabitants to aid & assist him" in extinguishing the fire, and imposed a forfeit of six shillings for each refusal, neglect, or delay of a person so commanded to help and assist. This act was limited to expire on June 1, 1746.

On December 16, 1758, the provisions of the act of December 17, 1743, were made the law as to the whole Colony of New York, and on the same

day a special act forbade the burning of old grass on certain beaches and islands of Suffolk County. The last-named act, which was to expire on May 1, 1760, was continued by successive acts until January 1, 1785.

A special act of unusual character was passed on November 8, 1760. This provided that the freeholders and inhabitants of the city of Albany, and of each town, manor, or precinct within the counties of Albany and Ulster, might elect at their annual town meetings such number of freeholders as they judged necessary to act as "firemen." These firemen were to have power to summon any of the inhabitants within their respective districts to assist "with all care and possible diligence" in extinguishing any forest fire within the district or the adjacent woods. Any person who without lawful excuse refused, neglected, or delayed to render such assistance when commanded, as shown by the oath of a fireman or otherwise, was to forfeit three shillings for each default, one-half to be used for the benefit of the fireman reporting and one-half for those assisting at the fire. This act was to expire on January 1, 1766.

On December 19, 1766, the provisions of the act of November 8, 1760, were reenacted and extended to include the county of Orange. An additional clause imposed a fine of two pounds for every default or neglect of a fireman to do his duty. This act was limited to expire on January 1, 1777.

On March 12, 1788, all prior general acts regarding the firing of the woods were repealed, and a penalty of ten pounds, in addition to damages, was imposed for the offenses defined by the act of December 16, 1758. This act required the justices of the peace, the supervisor, the commissioners of highways, and the officers of the militia not under the rank of captain, residing in a town where the woods were on fire, to order as many as they should deem necessary of the inhabitants of the town liable to work on highways, to assist in extinguishing the fire; and any person so ordered who should refuse or neglect to comply should forfeit four shillings for every day of neglect or refusal, with costs of recovery, and the oath of the person who gave the order was to be sufficient evidence for a conviction. The forfeiture recovered was to be used as a reward to such person or persons as a major part of the officers aforesaid should deem best entitled thereto, for superior exertions in extinguishing the fire.

IN NEW JERSEY

In 1683 the General Assembly at Burlington, in West Jersey, forbade any one from thenceforth to fire the woods before the 20th day of the twelfth month, under penalty of paying all damages and also of being fined not to exceed forty shillings. Firing within one's own lands was excepted from the penalties, provided that care was taken to prevent the fire from running outside and that no damage was done to the property of another person.

A New Jersey act of January 26, 1717, contained the same penalties and provisions as the act of 1683, except that the open season for firing was limited to the period from February 14 to April 14 of each year. This act made it clear that a person setting fire with care on his own land within this period was liable only for damages if the fire escaped from his control, while every person was liable for all damages caused by a fire set at any other time of the year.

An act of July 31, 1740, which specifically repealed the act of 1717, provided that if a person should set fire to his own woods at any time he should pay all damages suffered by another; and if he should set fire to woods not belonging to himself he should pay all damages suffered by any one, and forfeit forty shillings and costs to any one who should prosecute for the offense. Thus New Jersey, like other provinces and colonies, was compelled to give up the idea of an open season for burning, make all persons responsible at all times of the year for any damage caused by fires that they should set, and hold a severe penalty over the heads of those reckless ones who were accustomed to setting fires on the property of others.

On June 20, 1765, it was enacted that any one found guilty after February 1, 1766, of violating the provisions of the act of July 31, 1740, should be fined twenty pounds, or, if unable to pay the fine and costs, should be liable to imprisonment at the discretion of the county court, and justices and grand juries were urged to activity in the discovery of offenders.

IN PENNSYLVANIA

The first Assembly in the Province of Pennsylvania convened on March 10, 1683, and on March 20, 1683, passed a bill which provided that if any one should set a fire before the first day of the first month yearly he should make good all damages which should result from such act. An act of November 27, 1700, included the additional limitation that no fires should be set after the first day of the third month.

On March 27, 1713, the act of November 27, 1700, was amended so as to require a twenty-four-hours notice to the owner of any fence or building within one mile of which a fire was set, even within the seasonable limits allowed for burning by the act of 1700.

An act passed in the eighth year of the reign of George II (on March 29, 1735) referred to the act of November 27, 1700, stated that experience had shown "that the setting the woods on Fire at any time hath proved rather hurtful than beneficial to this Province, and great Losses have happened by Occasion of such Fire," repealed the previous act, and provided that thereafter every person should be liable for all damages caused by a fire which he should set, or cause to be set, at any time. The last clause of this act provided that if the offense were committed by any

servant, Negro, or slave without the direction of his, her, or their master or mistress, and the master or mistress should refuse to pay the damages and costs, the offender should receive not over twenty-one stripes "on his or her bare back" at the discretion of the justice, and should be committed to the county workhouse until the costs of the prosecution were paid.

IN DELAWARE

The provisions of the Duke's Laws regarding the firing of the woods as issued at New York on March 1, 1665, were applicable to the settlements on the Delaware, which fell into the control of the English at the same time as did New Netherland. Subsequent to 1682 these settlements were under the jurisdiction of Pennsylvania, but they were given a separate assembly in 1702.

An act of the Delaware Assembly in 1739 declared that whoever should fire the woods to the damage of another person, before March 10 or after May 1, should forfeit five pounds and costs, one-half to be paid to the poor and one-half to the informer, besides damages to the person injured; and if the offender lacked goods to make satisfaction, he should be liable to servitude. A Negro or a mulatto was to receive thirty-one lashes for the offense, and there appears to have been no alternative provision. An act of 1741 specified certain areas in which one would incur the penalties of the act of 1739 for setting fire at any time to the damage of another.

IN NORTH CAROLINA

In chapter 25 of the Acts of 1777, State of North Carolina, it is declared that the burning of the woods is "destructive to cattle and hogs, extremely prejudicial to Soil, and oftentimes of fatal consequences to Planters and Farmers, by destroying their fences and other Improvements." Section 2 of this act made it unlawful to fire the woods except on one's own property, and then notice must first be given to adjacent owners at least two days before the firing and effectual care must be taken to extinguish the fire before it could reach any vacant or unpatented lands. Section 3 imposed penalties for offenders, and section 4 provided that any slave, free Negro or mulatto, or vagrant person, who should be unable to pay the fine, was to "receive on his bare Back thirty-nine Lashes, well laid on."⁴

Chapter 29 of the Laws of 1782 declared that the penalties in the act of 1777 were insufficient, and amended section 3 by imposing a fine of twenty-five pounds for each offense, to be recovered "by Action of Debt, Bill, Complaint, or Information to use of person who shall sue or prosecute for the same," and the offender was further liable to the injured party for all damages suffered.

⁴ Whipping of free persons was repealed by chapter 182, Laws of 1782.

GENERAL LEGISLATION DIRECTED TOWARD THE CONSERVATION OF TIMBER AND THE PREVENTION OF TRESPASS

IN MASSACHUSETTS

THE PLYMOUTH COLONY

The first legislation in America having as an object the conservation of the supply of timber appears to have been the order of the Plymouth Court, dated March 29, 1626, to which reference has already been made (page 363). The need of conserving the timber resources through a prevention of waste and a supervision of utilization became more apparent as the years passed.

The ordinances of the Plymouth Colony as revised and published in October, 1636, forbade any person to sell out of the colony any boards, plank, or timber cut from the swamps reserved for public use, without leave from the public authorities. On June 29, 1652, the General Court at Plymouth ordered that whosoever should saw any boards at any place within the colony not in the bounds of any particular town should pay the Government twenty pence for every thousand feet of timber or plank. The General Laws of Plymouth Colony as revised and issued on September 29, 1658, retained the prohibition of the laws of 1636 against the sale of timber from the reserved swamps, referred to the loss that the country suffered because some persons were accustomed to fell timber on the common and allow it to waste, and enacted that any person who should fell such timber and not square nor rive it within six months should forfeit the same to the use of any one who should see fit to take it. This provision was reenacted in the General Laws as revised and published in 1672.

In 1669 it was ordered that no bark nor boards should be transported out of the colony, nor any kind of timber except that which was wrought into vessels or casks, on penalty of the forfeiture of the same to the colony; and an act of 1672 forbade the exportation of bark or unmanufactured timber out of Plymouth Colony during a period of seven years, under penalty of the forfeiture of the same or its value. The penalties were not to be imposed if the shipper proved that the timber or bark came from his own lands.

A Plymouth order of 1670 stated that several towns of the colony were already much straitened for building timber, and granted such towns the privilege of obtaining it from towns having plenty.

THE MASSACHUSETTS BAY COLONY

Similar solicitude as to the necessity of controlling the use of the forests was felt in the Massachusetts Bay Colony, established in 1628; and on November 17, 1632, the Court at Boston, in order to preserve good timber for the more necessary uses, ordered that no one should fell any

wood on public grounds for paling except such as had been viewed and allowed by the proper public official. The prohibition of the exportation of timber from this colony, which had earlier been imposed, was repealed in 1640. In 1660 the right of commonage in wood and timber was restricted to those already having the right and those to whom the inhabitants of the towns should extend it by a vote.

UNDER THE PROVINCIAL CHARTER OF 1691 AND THE CONFEDERATION

An act of March 2, 1694, in the Massachusetts Bay Province, forbade any one to cut trees from the lands of another or from the common of a town in which he did not have a right of commonage, without license, under a penalty of twenty shillings for every tree above one foot in diameter and ten shillings for every tree of smaller diameter. A second offense was punished by an additional fine of twenty shillings for the benefit of the poor of the town. These penalties were repeated in an act of June 10, 1698, with a further provision of treble damages for other wood or underwood.

In 1726 the penalties for cutting trees from the lands of others in the Massachusetts Province were increased to forty shillings for every tree one foot in diameter and for all trees of greater diameter three times their value besides the forty shillings, to twenty shillings for every tree or pole under one foot in diameter, and for wood and underwood treble its value. If the oath of the complainant were supported by circumstances making it highly probable that the defendant had committed the trespass, the burden of proof was on the defendant to avoid judgment.

A Massachusetts trespass act of November 23, 1785, reads in part as follows:

That if any person shall cut down, destroy or carry away any tree or trees whatever, placed or growing for use, shade or ornament; or any timber, wood or underwood, standing, lying or growing on land not his own; not having the consent of the owner thereof,..... the person so offending, shall forfeit and pay for each tree or stick of timber so cut down, destroyed or carried away..... a fine not less than Five, nor more than Forty Shillings, to the use of the Commonwealth,.....and shall be liable to answer in damages to the party injured.

This act provided that if any person, being indicted and sentenced, was unable to pay the fine, the court might order "such person to be publicly whipped, not exceeding twenty stripes, or be imprisoned not exceeding ninety days, and to find sureties for his good behavior for the term of one year."

On October 24, 1783, the General Court passed an act forbidding the cutting or destroying of white pine trees twenty-four inches or upward in diameter twelve inches from the ground, from any lands of the State, without previous license from the Legislature, under penalty of thirty pounds; and the penalty was incurred by any one who should aid or as-

sist in such cutting or destruction or in the drawing away of trees so cut or felled. This act also fixed a penalty of three pounds for the unlawful taking of any pine tree less than twenty-four inches in diameter twelve inches from the ground. Two-thirds of the penalties recovered went to the Commonwealth and one-third to the informer. This law was strikingly similar to the one that had aroused such opposition on the part of the colonists of New Hampshire when imposed by direction of the Crown during the colonial period. However, it should be observed that the colonists stated their grievances as consisting largely in the fact that the royal surveyor-general did not promptly select and mark the trees to be reserved for the navy, and that thus vast quantities of timber which were not needed for naval purposes were tied up uselessly, to the disadvantage of all.

IN NEW HAMPSHIRE

In the year 1640, at the newly founded town of Exeter within what later became the State of New Hampshire, the inhabitants voted that no one should fell any oak within a half mile of the town, except on his own planting lot or for buildings or fences, under penalty of five shillings for each tree unlawfully felled. In 1660, at Portsmouth, New Hampshire, a fine of five shillings was imposed for every tree cut by the inhabitants except for their own buildings, fences, and firewood; and in the towns of Kittery and Dover strict limitations were put on the number of trees that a person could have, felled and unmanufactured, at one time, the limit at Dover being ten, with a forfeit of ten shillings for every tree in excess of this number.

In providing for a settlement of the boundaries of Exeter, New Hampshire, in 1667, the General Court ordered that all pine trees fit for masts, twenty-four inches in diameter three feet from the ground, growing more than three miles from the Exeter meetinghouse and within the boundaries of the town, should be reserved for the public; and the Court fixed a penalty of ten pounds for each tree of this character that should be unlawfully felled, one-half of the penalty to go to the informer and one-half to the treasury of the county.

At Hampton on May 13, 1680, selectmen were chosen to act for the town in general matters, but these men were prohibited from disposing of any timber, this being a matter that rested with the freemen of the town; and at the same town on June 12, 1680, the freemen chose three men who were "to prosecute by way of suit or other ways, against any person or persons that shall trespass or have trespassed upon the town's rights, either in timber or land, by fencing or in other ways."

A New Hampshire act of October 8, 1697, fixed a penalty of five shillings for every tree cut without leave on the land of another, the fine to be

paid to the person damaged, and imposed a fine of from forty shillings to one crown for the cutting of a marked boundary tree. A general trespass act of the same year was broad enough to include injury to trees.

An act for preventing trespasses, passed on October 16, 1707, required that any person who should without permission cut trees from the lands of another should pay to the party injured twenty shillings for every tree one foot or over in diameter, ten shillings for smaller trees, and treble its value for wood and underwood. For a second offense, in addition to the above forfeit and damages to the injured party, the offender must pay a forfeit of twenty shillings to the poor fund or suffer one month imprisonment. Children or servants for whose offenses the parents or the master refused to answer might be whipped or set in the stocks or the cage.

An act of the General Court in 1718 imposed for each tree a penalty of twenty shillings or more, according to its value, to be paid to the party damaged, and ordained that "the Owners shall be accounted those, or such as derive a right from those to whom the Land upon which said Trees grow, is laid out, and bounded by the Layers out of Land chosen in each town," except where the right to the timber was in one person and that to the land in another, in which case the damage went to the owner of the timber. The act was not to apply to trees cut for the use of the royal navy.

IN CONNECTICUT

THE NEW HAVEN SETTLEMENTS

The need of controlling the cutting of timber on public lands was recognized also in the settlements in Connecticut. An order issued on November 25, 1639, by the General Court of the New Haven Colony, founded in 1638, forbade any one to cut timber from common ground except where assigned by the magistrate, and appointed two men to search the woods for timber that had been cut but not crosscut nor squared, and authorized them to seize the same, one-half for themselves and one-half for the town. In 1640 the General Court imposed a fine of twenty shillings for each offense of cutting a tree where spruce masts grew. In 1642 the General Court declared that whoever should without leave cut a tree standing on any common within two miles of any part of the town, should lose the tree and his labor and suffer a fine of one shilling; and if he should carry away the tree or a part of it he should pay such further damage as the Court should judge proper. An order of February 24, 1644, was directed toward an enforcement of the order of 1642; and one of June 16, 1645, appointed men who should supervise the getting of bark for tanning purposes, to the end that damage to the forests should be prevented as much as possible.

The revised New Haven laws of 1644-45 repealed the order of 1640 imposing a fine of twenty shillings for cutting a tree where spruce masts

grew; but on January 31, 1647, the General Court ordered that no man should fell any tree within the common of the town of New Haven, without leave from some magistrate, and that even then he should have the wood only for his particular trade or necessary use. This order also provided that if timber thus cut down were left unused for more than fourteen days, it should be forfeited to the use of any one whom the magistrate might give leave to take it.

THE SETTLEMENTS ON THE CONNECTICUT RIVER

On September 10, 1640, in the fourth year of the settlement at Hartford, Connecticut, the General Court forbade the felling of timber on the commons without a license from the particular court having jurisdiction, and prohibited the selling of pipestaves for exportation to foreign markets unless the same were viewed and approved by a committee to be appointed by the court. On September 9, 1641, the previous order was modified so as to permit the felling of timber on the commons, except within three miles of the mouth of the Matabezeke River, provided the timber was felled between the end of September and the beginning of April, worked up within one month after felling, and transported out of the colony only in exchange for necessary provisions brought in. These requirements were reenacted in the *Code of Laws* promulgated in 1650.

UNITED CONNECTICUT UNDER THE CHARTER OF 1662

A Court of Election held at Hartford, Connecticut, on May 12, 1687, forbade the transportation of timber out of any township of the colony without the consent of the town, under penalty of the forfeiture of the timber, and decreed that the master of any vessel who should receive on board any timber without the required license should forfeit forty shillings for every breach of the order. This order was not to apply to saw-mills erected with the consent of the General Court. The same order provided a forfeit of five shillings for every tree that should be cut on the common by a tanner for the bark, without license first obtained from the town. On October 12, 1699, the General Assembly at Hartford enacted a law similar in its prohibitions and penalties to the order of May 12, 1687, but requiring that a license for exportation must be "in writing under the hands of the major part of the selectmen of the town."

At a general assembly begun at Hartford on May 8, 1718, it was enacted that any one who should cut any tree "on the land which appears to be the property of any other person or persons, and hath been formerly bounded out, and the lines between corner and corner marked out or renewed within four years next before the felling of such tree, without leave first obtained from such owner or owners, under his or their hands," should pay to the

owner "for each tree or stadle under one foot over at the stub, five shillings; for each tree which is one foot and under two foot, ten shillings; and for each tree two foot over or more at stub, twenty shillings, over and above the value of the trees so felled." Agreements of towns were specifically saved from the prohibition of the act.

In October, 1726, the Assembly forbade any person, after December 31, 1726, to "cut, fell, destroy or carry away, any tree or trees, timber or underwood whatsoever, standing, lying or growing on the land of any other person or persons, or off or from any sequestered land for town commons, or any common or undivided lands in any town, without leave or license of the owner or owners of such lands," on pain of a forfeit to the party injured of "twenty shillings for every tree of one foot over, and for all trees of greater dimensions three times the value thereof besides twenty shillings as aforesaid, and ten shillings for every tree or pole under the dimensions of one foot diameter." The inhabitants of the respective towns were entitled to the penalties if the timber was cut from lands sequestered for town commons, and the proprietors of the lands were entitled to those derived from cutting on "common and undivided lands." If the plaintiff merely made it appear to the Court highly probable that the defendant had committed the offense, the plaintiff should have judgment unless the defendant acquitted himself under oath; in the latter case, the defendant should have judgment for double costs. The proprietors of undivided lands and the inhabitants of towns holding sequestered commons could dispose of their timber as they saw fit, but only reasonable restrictions could be imposed as to the getting of firewood or fencing stuff for personal use by any inhabitant from a town common. Under the act an offender was liable for only the just value of the timber if he proved that he believed he was entitled to it at the time of cutting or taking. The act was limited to substantially two years. An act to explain a special exception in this act was passed in October, 1734. The Acts and Laws published at New London in 1750 reduced the penalties to five shillings for trees under one foot, ten shillings for those of one foot, and treble their value plus ten shillings for those of larger diameter.

IN RHODE ISLAND

THE PROVIDENCE PLANTATIONS

An order of February 28, 1638, in the Providence Plantations, which had been founded in 1636, required that two men should view the timber on the common and determine what was best suited for the use of each person. This order provided for a forfeiture to the town of timber that any one should permit to lie on the ground for more than one year after felling. Orders of November 27, 1650, and December 11, 1666, imposed fines for the

taking of timber from the commons without the consent of the town, and one of 1651 forbade the cutting of timber on the common purposely for goats.

THE NEWPORT SETTLEMENT

A court held at Newport, Rhode Island, in 1639, expressly forbade two parties who were engaged in sawing lumber from exporting any timber from the town of Newport without license from the authorities.

THE PORTSMOUTH SETTLEMENT

In 1640, at a public meeting at Portsmouth, liberty was granted for the exportation of a shipload of pipestaves, clapboards, and other articles, under the direction of the town.

THE UNITED SETTLEMENTS IN RHODE ISLAND

An order of May, 1647, applicable to the settlements of Providence, Newport, Portsmouth, and Warwick, imposed treble damages and costs, or servitude in the house of correction, for the offense of trespassing on timber.

On February 6, 1710, the authorities of the Rhode Island and Providence Plantations forbade the cutting down or carrying away of cedar, pine, or other timber from the commons without a proper grant from the proprietors of the Plantations, and in 1714 a fine of five shillings was imposed for every tree or pole cut from the land of another without the owner's permission.

An act directed against persons who cut timber from the lands of others without leave, was passed at a session of the General Assembly of Rhode Island and Providence Plantations beginning on February 14, 1743. This act imposed a fine of twenty shillings plus treble its value for every tree one foot or over, ten shillings for every tree under one foot, and for other wood or underwood treble its value. The second section of the act placed the burden of proof on the defendant after the plaintiff had taken oath that the trees were cut or destroyed as mentioned in the writ by number, and that he suspected the defendant and the circumstances supported this view. However, if the defendant acquitted himself the plaintiff was to pay double costs.

IN NEW YORK

In New York an act of May 16, 1699, aimed to prevent timber trespass on the commons and on private property. This act fixed penalties for the unlawful cutting of timber, of twenty shillings for every tree one foot or over in diameter, six shillings for every tree or pole under that size, "and for other wood or underwood the value thereof," to the party injured. The act provided further that if an offender were convicted a

second time he should, in addition to the above forfeitures and damage to the party injured, forfeit to the town in which the offense was committed the sum of forty shillings, or suffer one month imprisonment. The city and county of Albany and the county of Ulster were exempted from the provisions of this act, but an act of December 24, 1759, extended the limitations of the former act to Ulster County.

The first legislative recognition in America of the principle of timber conservation through the imposition of a diameter limit for cutting, except the acts that were enforced by the requirements of the parliamentary act directed at the maintenance of a supply of mast timber, was by an act passed at Albany on March 24, 1772. This act forbade any person or persons whatsoever, either by themselves, their servants, or their slaves, to bring into the city of Albany or into a specified part of the Manor of Rensselaerwyck, "any Wood to be used as firewood, either for sale or otherwise, under the Diameter of six Inches if such Wood be of the Pine kind, and four Inches Diameter if of any other kind of Wood at the Stump end on Penalty of forfeiting and paying the Sum of Six Shillings for every Load of Wood which shall contain more than six Sticks or Pieces of Wood under the size aforesaid," the penalties to be used for public purposes of the city and county of Albany.

IN NEW JERSEY

On June 23, 1666, at Elizabeth Town, in the newly established proprietary of New Jersey, it was decreed by Governor Philip Carteret and his Council that no one should cut any timber trees useful for building, fences, or the making of pipestaves, on any lands not their own, nor within three miles of any home lot belonging to the town, without license from the Governor or the owners of the land, under penalty of forfeiting five pounds sterling for every tree so felled.

A General Assembly at Elizabethtown on October 21, 1678, imposed a penalty of five pounds for every tree cut from unpatented lands, one-third of the fine to go to the informer and two-thirds to the public treasury.

At the first session of the General Assembly for West Jersey, convened on November 9, 1681, it was enacted that no one should fell or carry away timber from any land surveyed within the province, without leave of the owner, under pain of treble damages.

At a council held at Elizabethtown in East Jersey on December 1, 1683, a resolution was adopted reciting that much timber trespass and waste was being committed, and authorizing the Governor to issue a proclamation and enforce the law against timber trespass.

A council held at Burlington, New Jersey, in February, 1710, considered a bill entitled "An Act for preventing the Waste of Timber and Pine

Trees, Poles and Pine Knots within this province of New Jersey." This bill did not become a law, but a similar one including cedar trees became a law on March 11, 1714. This act recited that there had been great waste through the cutting and carrying away of timber, the boring of trees, and the extracting of turpentine, both on the lands of the proprietors and of others, and expressed the belief that the exportation of pipe and hogshead staves to neighboring provinces would both destroy the timber and discourage trade. The act accordingly imposed penalties of twenty shillings for each tree cut, bored, or boxed on the land of another, and ten shillings for every pine or cedar pole cut. Cutting on the commons was excepted from the penalties.

The penalties of the act of March 11, 1714, did not prove sufficient to prevent timber trespass, and in 1759 it was enacted that any person who should cut, box, bore, or destroy any tree, sapling, or pole, on lands to which he did not have right or title, should forfeit twenty shillings in addition to the penalties inflicted by the act of 1713-14. The operation of this additional penalty was limited to five years. There appear to have been other temporary acts imposing additional penalties, and on December 21, 1771, not only was the additional penalty of twenty shillings imposed, but the time within which prosecution might be brought was extended from the six months named in the act of 1713-14 to eighteen months. The act of 1771 was limited to seven years.

On March 18, 1780, the Council and General Assembly of the newly organized State of New Jersey passed an act which recited that the act of 1713-14 and the acts supplementary thereto had by experience been found beneficial to the interests of the State, but that the penalties therein had of late proved insufficient; and, since the supplementary acts had expired by limitation, it was enacted that for each tree, sapling, or pole cut, felled, worked up, carried away, boxed, bored, or destroyed on any land within the State, without permission, by any person who had no right or title thereto, a penalty of fifty pounds should be paid. Section 2 provided that judgment and execution should be given even though the defendant claimed the land, unless he gave bond in the sum of one thousand pounds for appearance in an action of trespass. Eighteen months were allowed for the bringing of actions, and the act of March 11, 1714, was repealed. This later act appears to have overshot the mark in the matter of penalty and bond, for on June 13, 1783, an act was passed which fixed the penalty for the same offenses as those mentioned in the act of 1780 at three pounds for each tree, sapling, or pole, allowed eighteen months for prosecution, and fixed the bond in cases in which the defendant claimed the land at double the amount of the claim. Section 2 made subject to the penalty of the act any one who should saw a log which he knew to

have been stolen. The cutting of trees for the repair of a highway was specially excepted from the prohibition of the act, and the act of 1713-14 was again repealed.

IN PENNSYLVANIA

Prior to establishing a colony in the vast proprietary domain that had received the name *Penn's Woods* because of the magnificent forests which were known to lie within it, William Penn published in England a fundamental document, of which section 11 declared that all deeds should include all woods and underwoods, and section 18 provided that care must be taken to leave one acre of trees for every five acres cleared, and especially to preserve oak and mulberry for silk and shipping.

In the first Assembly, on March 30, 1683, a resolution forbidding any one to fell the trees of another person was adopted, and at a session begun at Newcastle on October 14, 1700, a forfeit of five pounds to the owner was prescribed for the cutting of a black walnut tree, one of fifty shillings for any other timber tree, and double its value for firewood or underwood. On March 17, 1780, trespassers on timber were made liable to fine and imprisonment in addition to the payment of treble damages to the owner of the land, whether the owner was a private party or the commonwealth.

IN DELAWARE

In Delaware an act of 1741 declared that any one cutting down any "timber tree or trees" on the lands of another should pay the injured party fifty shillings and costs. For failure to pay this penalty the offender could be required to make satisfaction by servitude for a period not exceeding four years. A timber tree was defined as a tree one foot or over in diameter two feet from the ground. The cutting of "firewood or underwood" must be satisfied by treble damages and costs, or by servitude. This act repealed one previously in force. It will be remembered that Delaware had been governed by the laws of Pennsylvania prior to 1702, and that those laws were effective in Delaware until they were repealed.

IN MARYLAND

A Maryland act of June 2, 1692, granting certain free use of timber to any one who should build a mill, excepted timber fit to "split or cleave into clapboards." An act of September 21, 1704, declared that grantees of land lying within the land of the Indians should have an action of trespass against any one who should cut timber therefrom under pretence of having bought it from the Indians. An act of 1724, authorizing the free use of timber for repair of highways, excepted trees fit for clapboards or coopers' timber.

REGULATION OF THE LUMBER AND TIMBER INDUSTRY

The extent to which the authorities exercised control over manufacture and trade in lumber in the colonial period presents a striking contrast to the *laissez faire* policy of the nineteenth century.

STATUTORY PRICES FOR LUMBER AND TIMBER PRODUCTS

On September 27, 1631, the Court of Assistants at Boston ordered that sawyers should not take over twelve pence a score for sawing boards if the wood were felled and squared for them, and not over seven shillings per hundred if they felled and squared the timber themselves.

At Newport, Rhode Island, in 1639, Ralph Earle and his copartner, Mr. Willbore, were required to furnish the town with sawed boards at eight shillings per hundred and with half-inch boards at seven shillings per hundred, delivered by the pit at the waterside; and with clapboards at twelve pence a foot.

On June 7, 1641, the General Court at Hartford, Connecticut, ordered that sawyers should not take over four shillings and two pence for slit work on three-inch planks, or over three shillings and six pence for boards by the hundred; and that boards should be sold for not over five shillings and six pence per hundred.

In 1669 the Court of Plymouth declared that no boards should be brought into the colony or sold at a price above forty-five shillings per thousand at the waterside where sawed, under a fine of ten shillings per thousand.

REGULATION OF THE SALE OF FIREWOOD

The standard cord of firewood — 8 feet long, 4 feet broad, and 4 feet high — was established by law in the Massachusetts Bay Colony in 1647, in New York in 1684, in Rhode Island in 1698, in South Carolina in 1738, in Delaware in 1741, in Georgia in 1766, and in North Carolina in 1784; and provision for official wood-corders was made in Massachusetts in 1655, in Rhode Island in 1698, and in New Hampshire in 1714. There was subsequent legislation on the same subject in practically all of these colonies.

INSPECTION OF TIMBER PRODUCTS, AND EXPORT DUTIES THEREON

IN MASSACHUSETTS

THE MASSACHUSETTS BAY COLONY

An order of 1641 prescribed the length and quality of pipestaves that were to be offered for exportation from the Massachusetts Bay Colony. This order did not prove sufficient, and on November 4, 1646, the General

Court, after reciting the evils to foreign trade which would result from the exportation of pipestaves of poor quality, especially on account of worm-holes, ordered that the selectmen of Boston, Charlestown, and all other towns from which pipestaves were shipped, should from time to time, as should be necessary, choose viewers who should be sworn to faithfully inspect all pipestaves intended for exportation to Spain or Portugal, or to the dominions of either nation. All material that did not, in the opinion of the viewers, conform to the standards required by the trade, was to be forfeited. Any master or officer of a ship who should receive material in evasion of the order was liable to a forfeit of five pounds sterling for every thousand staves so received. A supplementary act of May 19, 1669, specified more particularly the sizes and qualities required for white oak and red oak staves.

On June 2, 1653, the General Court granted a request of Boston and Charlestown that selectmen in those towns be permitted to appoint persons to measure lumber, and an act of May 23, 1655, authorized the selectmen of Boston, Charlestown, Salem, and such other towns as should think fit, to appoint persons who should be sworn to faithfully and uprightly measure wood and boards, and no one was to be required to receive such articles until measured by these officials.

THE PROVINCE OF MASSACHUSETTS BAY

A Massachusetts act of June 18, 1695, provided that any purchaser of shingles might apply to a justice of the peace, who should thereupon appoint some able house carpenter, who should under oath view the shingles and seize, for the benefit of the poor of the town, bundles containing shingles that did not conform to the standard sizes of 15 or 18 inches long, $3\frac{1}{2}$ inches wide, and $\frac{1}{2}$ inch thick, or that were not well shaved. An act of June 21, 1710, provided for the annual election, in every town of the province where boards, plank, timber, or slit work were imported or exported, of two or more surveyors, who were to receive fees for inspecting timber products. Cull material was to be burned or forfeited for the poor.

On June 23, 1727, the General Court said there had been abuses of the former acts, provided in greater detail for inspection, and required that the brand of the town where they were inspected should be placed on every bundle of shingles or clapboards. No shingle was to be under 3 inches wide, and the average was to be $4\frac{1}{2}$ inches. The shingles were to be either 15 or 18 inches long, "as sold for," $\frac{1}{2}$ inch thick at the butt, and well shaved so as to be free from winding. Clapboards exposed for sale must be of sound timber, $\frac{5}{8}$ of an inch thick, 5 inches wide, 4 feet 6 inches long, straight, and well shaved. The surveyors were to be ap-

pointed annually by the justices of the peace and were subject to a fine for refusal to serve. The act was to be effective for a period of four years, beginning January 1, 1728, but an act passed on January 4, 1738, was substantially the same as that of June 23, 1727, and another of the same day regulated the quality and sizes of pipe, barrel, and hogshead staves. Both the latter acts were limited to five years.

An act of March 22, 1743, which declared the act of June 21, 1710, deficient in that it did not provide for the measurement of lumber at the place where it was received but only at the place whence it was shipped, made provision for the election at annual town meetings of a surveyor in every town where lumber was rafted off or bought. This law contained detailed directions and specifications for the inspection of shingles, hoops, staves, lumber, and the like. It was limited to expire on June 10, 1747, but was followed by other acts which revived and supplemented its provisions.

UNDER THE CONFEDERATION

The successful close of the Revolution gave new life to trade, and by an act of July 11, 1783, Massachusetts attempted to insure the building of a substantial commerce in timber products with the outside world. This required the election of surveyors in every town at the annual meetings, prescribed specifications for various timber products, provided for fees to surveyors and for certificates of inspection, imposed penalties for evasion, and repealed all former inspection acts. A supplemental act of March 16, 1784, extended the restrictions of the act of July 11, 1783, to all ports not within the State of Massachusetts, imposed additional penalties on the master or owner of any vessel who should attempt to evade the law, and declared that fully seasoned boards $\frac{7}{8}$ inch thick should be considered merchantable. This was during the period of rivalry and retaliation between the confederated States as to trade, and it is probable that the purposes of the act of July 11, 1783, had been evaded by the exportation of timber products to foreign countries through the ports of other States.

IN NEW HAMPSHIRE

On October 4, 1683, it was ordered in New Hampshire that thenceforth no pine boards should be accounted merchantable or delivered in payment unless they were a full inch in thickness and square-edged; and that if any boards were exported which did not comply with these requirements, such allowance should be made to the buyer or receiver as should be adjudged reasonable by a sworn surveyor appointed for that purpose. The preamble to this enactment indicates that it was directed largely toward the maintenance of a lumber trade with the West Indies,

from which place complaint had come as to the thinness and wany edges of New Hampshire lumber. An order of October 22, 1683, forbidding vessels of over one hundred tons burden of the Massachusetts or Plymouth Colonies from loading any boards or timber at New Hampshire ports, except under license from the New Hampshire Governor, aimed to protect home shipping.

On August 10, 1687, standard specifications for staves and boards were fixed and provision was made for official cullers; and in 1704 it was enacted that any one purchasing lumber should have the right to measure it in the presence of a selectman, constable, or other officer, and such as did not conform to its marks was to be forfeited. On June 21, 1785, a very complete lumber inspection act was passed. This act, which was unlimited as to duration, covered boards, shingles, clapboards, hoops, staves, heading, and shooks, and repealed all previous acts.

IN CONNECTICUT

THE SETTLEMENTS ON THE CONNECTICUT RIVER

An order of September 10, 1640, passed by the General Court at Hartford, Connecticut, forbade the exportation of pipestaves to foreign markets unless they were first viewed by a committee appointed by the Court and approved both as to quality of timber and as to size; and an order of September 9, 1641, restricting the felling and exportation of timber, fixed a standard size for pipestaves and provided for inspection.

UNITED CONNECTICUT UNDER THE CHARTER OF 1662

A Connecticut act of August 10, 1667, provided for inspection of timber products in every seaport town by sworn officials who were empowered "to cast by all such staves as they judge not to be merchantable either in respect of wormholes or want of assize." All pine, spruce, or cedar boards offered for exportation must be either one full inch or one-half inch thick.

An act of May 13, 1714, which declared one of its objects to be the prevention of the destruction of timber, but which in reality appears to have aimed chiefly at a discrimination in favor of British and Connecticut shipping interests employed in transporting goods to the West India Islands, imposed a duty on all pipe, barrel, and hogshead staves shipped from Connecticut to Massachusetts Bay, New York, the New Jerseys, Rhode Island, or New Hampshire. On May 12, 1715, a duty was laid on ship timber, plank, and boards exported to any of the colonies named in the act of May 13, 1714. The main object of this law appears to have been encouragement to Connecticut shipbuilding. A similar act passed

in May, 1747, levied export duties on staves, heading, ship timber, plank, boards, and bark destined to any of the colonies named in the act of 1714 except the New Jerseys. This act appears to have remained in force until 1786, when its provisions were included in the revised laws published in that year. The revised laws of 1786 also contained full provisions for the inspection of timber products offered for export.

IN RHODE ISLAND

A Rhode Island act of 1731 provided that in each town where boards, planks, shingles, clapboards, and slit work were usually imported or exported, there should be two or more surveyors elected annually at town meetings. The surveyors were required to give due consideration to drying and shrinking, and to make reasonable allowance for rots, splits, and wains. The sizes of shingles and the fees to be allowed were specified.

IN NEW YORK

No legislative control of timber inspection was exercised in New York until March 1, 1788. Under the law then enacted, the Governor and Council were to appoint an inspector for the city and county of New York, who was to appoint deputies for Albany, Hudson, Kinderhook, and other places where necessary. Sizes and quality were fixed for boards and shingles, and the inspector was required to mark his initials or his full surname, and the quantity, on each piece or bundle inspected. The inspection of staves was provided for in an act of March 7, 1788.

IN NEW JERSEY

A New Jersey law of October 2, 1694, required that before any timber, planks, boards, oak bolts, staves, heading, hoops, or hop poles were loaded in any port of that province, the master of the vessel must have a permit from the customhouse at Perth-Amboy and must have given a well-secured bond, in the sum of one hundred pounds penalty, guaranteeing that the goods would be unloaded only in the Kingdom of England, the West Indies, or one of the Summer, or Wine, Islands. Firewood and cedar shingles were specifically excepted from the restrictions of the act. Chapter 12 of the laws of the same session required the Governor to appoint an official in every town to enforce the act.

A timber trespass act of March 11, 1714, imposed duties on pipe or hogshead staves shipped to any of the British colonies on the American continent, but the duty on hogshead staves was removed on January 25, 1717. An act of December 2, 1743, imposed duties on all logs or timber products, except firewood, exported from eastern New Jersey to any of the colonies on the American continent. The penalties for violation

were very severe. The portion of this act forbidding the exportation of timber from Essex County was repealed on February 18, 1748, but the export duties were retained until the Revolution.

On September 26, 1772, inspection of timber products of all classes was provided for. Under this act, which became effective on January 1, 1773, and was limited to seven years, lumber shipped to neighboring colonies was not required to be inspected, nor was that shipped to foreign markets, if neither the buyer nor the seller required inspection.

IN PENNSYLVANIA.

The first Assembly of Pennsylvania adopted on March 13, 1683, a resolution in regard to pipestaves, and section 5 of chapter 80 of the laws of 1700 fixed specifications for barrel and hogshead staves.

On April 21, 1759, the General Assembly of Pennsylvania undertook to prevent the exportation of unmerchantable staves, heading, boards, and timber by establishing specifications and providing for inspection along substantially the same lines as obtained in the New England colonies. Supplementary and amendatory acts were passed in 1761 and in 1767. The act of 1759 as thus amended appears to have remained the law until September 29, 1789.

IN VIRGINIA

In a letter of March 28, 1628, to the King, the General Assembly of Virginia advised him that pipestaves, barrel boards, and clapboards could be procured in great abundance, but that the freight was too high to make it an object to export them.

Not until more than a century later was the necessity of timber inspection recognized by the Virginia Legislature. In 1752 the dimensions and quality of staves, heading, and shingles intended for exportation to Madeira or the West Indies were fixed by a law which was limited in operation to a period of two years.

In 1786 lumber inspection was provided for the counties of Norfolk and Princess Anne and the borough of Norfolk; and on December 13, 1787, the provisions of the act of 1786 were extended to all counties and corporations of the commonwealth.

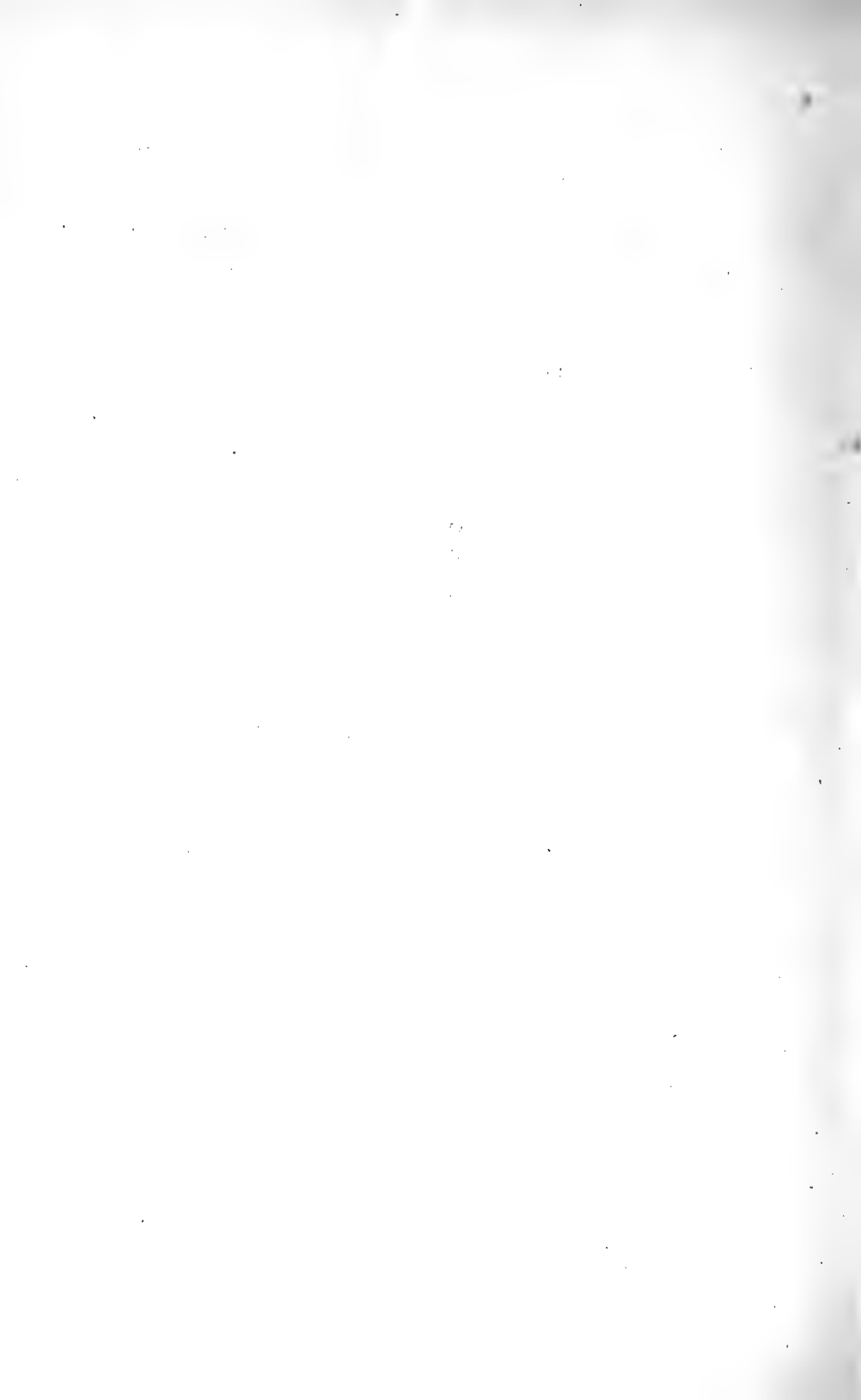
IN NORTH CAROLINA

An act of the Assembly, begun at Newbern, North Carolina, on December 5, 1770, regulated in exceptional detail the exportation of flaxseed, pork, beef, rice, flour, butter, tar, pitch, turpentine, staves, heading, shingles, lumber, tanned leather, and deerskins. Inspectors were to be appointed by justices of inferior courts in each county, to be sworn and

to give bonds. Section 27 of the act read: "Provided, nevertheless, That no Staves, Heading, Shingles, Boards, Plank, square Timber, or Deer-Skins shall be inspected, unless required"; and section 28 provided that if "dispute arose between seller and purchaser of any Boards, Plank, or other Lumber intended for the English market, the Inspector shall inspect the same, agreeable to the English Act of Parliament, if called on for this purpose." So important was the office considered that inspectors were ineligible to membership in the colonial legislature. The operation of this act was limited to ten years. After its expiration, however, the need of such a law was felt, and chapter 26 of the laws of 1784 made complete provision for the inspection of timber products offered for exportation.

IN SOUTH CAROLINA

On March 25, 1738, the Provincial Legislature passed a general act to prevent frauds in the selling of various staples, including shingles and firewood. This was followed on June 17, 1746, by a very comprehensive act on the same subject. The latter act, which was limited to three years, was allowed to lapse, but on March 12, 1783, its provisions were revived and were continued without limitation as to time of operation.



BRITISH LEGISLATION DIRECTED TOWARD THE CONTROL OF FOREST INDUSTRIES IN THE COLONIES

Within two decades after the founding of the first permanent British colony in North America, the Crown manifested an interest in the production of naval stores in the New World; and in a letter dated March 28, 1628, the General Assembly at Jamestown, Virginia, advised the King that, although there were great possibilities for the production of pitch and tar in the new country, the industry could not be profitably undertaken at that time.

On November 15, 1644, the General Court at Hartford, Connecticut, granted to two men the privilege of making tar in the colony under certain restrictions. On October 21, 1653, complaint was made to the Court of the inconveniences which had been suffered by some of the inhabitants of Windsor because of the burning of tar near the town. In 1663 John Griffin was granted two hundred acres of land for making it appear that he was the first to make pitch or tar in Connecticut.

An act of June, 1661, in the Plymouth Colony, fixed an export duty of six pence per barrel on tar made within the lands of any township, and twelve pence per barrel for any tar gathered on the "Countryes Comons," with a penalty of four shillings a barrel for evasion of the act. An order of 1668 forbidding the making of tar in Plymouth Colony was repealed on June 6, 1669; and one of 1670 providing for the granting of a monopoly for the purchase of all tar made in the colony during a period of two years, to any one who should agree to pay eight shillings a barrel and twelve shillings for each half hogshead, was repealed on June 9, 1671.

An act of June 8, 1671, in the Massachusetts Bay Colony, granted to a company a ten-years monopoly of the right to make for sale "pitch, rozin, turpentine, oyle of turpentine or masticke of the pine or cedar trees of this jurisdiction." The company was required to pay six pence per hundredweight for pitch and rosin made from timber on the commons.

In furtherance of a policy of increasing the production of naval stores, between 1664 and 1669 the duties on pitch and tar produced in Virginia and Maryland and imported into England were remitted.

The several charters and grants of lands in the New World issued to companies and individuals by James I, Charles I, and Charles II, of England, each included a full title to all trees found growing thereon, and a thriving foreign trade in shipbuilding materials and other timber products ultimately developed in the Massachusetts Bay Colony (to which Charles I granted a charter in 1629) and in the other New England colonies.

Under the beneficent guidance of Oliver Cromwell a new spirit of

maritime enterprise developed in the British nation in the decade beginning with 1650. Viewing with jealous eyes the trade expansion of the Dutch Netherlands, the English Parliament, in 1651, passed a Navigation Act which permitted the importation and exportation of goods into or from England or her colonies in English ships only, except in ships of the country from which the goods came or to which they went. This legislation probably contributed in part to the building up of a national merchant marine which was vigorously supported by an effective navy. However, merchant vessels of the Dutch and other nations continued to hold a large part of the commerce of the English colonies in North America with the West Indies and with the Continent of Europe.

Accordingly, in the first year of the Restoration, Parliament drew the line closer by enacting that from and after December 1, 1660, no goods should be imported into or exported from any of the British colonies in America except in vessels which belonged to Great Britain or to the said British colonies and of which the master and at least three-fourths of the mariners were English. Three years later a supplementary act required that after March 20, 1664, all goods destined for the English colonies in America must be laden and shipped in England, Wales, or Berwick upon Tweed, and in English vessels. This was followed by other restrictive acts, such as that which required the governors of colonies to report each year the number of ships laden out of the territory under their jurisdiction, and that of 1672 requiring that goods imported into England in colonial vessels must pay duty and that ships loading in any of His Majesty's plantations after September 1, 1673, must give bond to bring the cargo to England, Wales, or the town of Berwick upon Tweed.

With the expansion of the navy and the merchant marine of Great Britain during the Commonwealth and the early years of the Restoration, came a demand for shipbuilding materials which the European sources of supply could meet only at an increased price. Furthermore, a reliance on foreign sources for the commodities most essential to naval supremacy was a direct invitation to disaster. The accession of William of Orange to the British throne in 1688, after the depressive reigns of Charles II and James II, marked the rise of a new national hope and ambition in England. In 1684, by direction of James II, the charter of the Massachusetts Bay Colony had been vacated on a writ of *quo warranto*.

On October 7, 1691, William and Mary consolidated into a single royal province "the territories and colonies commonly called or known by the names of the Colony of the Massachusetts Bay and Colony of New Plymouth, the province of Maine, the territory called Acadia or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said province of Maine," and issued a new charter

for the combined colonies under the title *The Province of Massachusetts Bay in New England*.

Although the charter of 1691 granted to the new province much of the freedom enjoyed by the Massachusetts Bay Colony under the charter of 1629, it contained one important reservation. This reservation clause declared that for the better providing and furnishing of masts for the royal navy, the grantors reserved to themselves, their heirs, and successors, all trees of the diameter of twenty-four inches and upward twelve inches from the ground, growing on any land within the province not theretofore granted to a private person. The reservation further forbade any one to cut or destroy such trees without a royal license first obtained, under penalty of one hundred pounds sterling. When one reflects that this charter granted to the inhabitants of the province four-fifths of all gold, silver, or other minerals in the lands, one begins to realize the significance of this reservation of timber.

Notwithstanding the reservation of pine trees in the charter of 1691, and the restrictions of the navigation acts, the cutting of pine and its exportation continued, in response to a strong demand for timber products from foreign nations as well as England; and when it became increasingly difficult to obtain shipbuilding material of first quality at the ports of New England, the British Crown took active steps to prevent the unnecessary destruction of trees suitable for masts.

The pressure brought to bear on the colonies by the Crown is shown in the order of the Governor and Council of New Hampshire in 1683, forbidding vessels of Massachusetts, evading the navigation acts, from loading at New Hampshire ports; in the New Jersey act of 1694, requiring the masters of vessels loading at ports of that province to give bond for the transportation of their cargoes to England, the West Indies, or the Summer, or Wine, Islands; and in a Massachusetts act of 1694-95, which declared that the King had signified his desire that a trial be made of producing naval stores in that province, and forbade any one to transport any pitch, tar, rosin, plank, or ship timber out of the province without special license from the Governor and Council.

In 1696 King William III created a commission known as the Lords of Trade, to whom was assigned the duty of improving conditions in the British plantations in America. This commission undertook to develop the naval store industry in the colonies, and Lord Bellomont, who was sent to America as Governor of Massachusetts Bay, New York, and New Hampshire, exhibited a special interest in the project from his arrival in New York on April 2, 1698, until his death in the same city on March 5, 1701.

The rising prices of naval stores in Europe, together with the realization

of national needs which came in the conflicts of King William III with Louis XIV of France in the last decade of the seventeenth century, were accentuated when war between England and France began again in 1702 after a peace of only five years. This war, known as the War of the Spanish Succession, involved all of western Europe and forced upon British statesmen a consideration of every plausible means of increasing the naval independence of the nation.

With a view to establishing a permanent source of naval stores within its own dominions, the British Parliament in 1704 passed an act which placed bounties on tar, pitch, rosin, turpentine, hemp, masts, yards, and bowsprits imported from the American colonies into Great Britain. For the preservation of trees fit for the production of naval stores, this act imposed a fine of five pounds for the offense of cutting or destroying a pitch pine tree or a tar tree, under twelve inches in diameter three feet from the ground, not within a fence or an actual inclosure, within the colonies of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, and New Jersey; and fixed a fine of ten pounds for the offense of wittingly or willingly firing any woods or forest in which there were trees prepared for the making of pitch or tar, without first giving notice to the person who had prepared the trees for the making of pitch or tar, in any of the said colonies. The act became effective on January 1, 1705, and was limited to nine years.

In order to insure a proper execution of this act, John Bridger, who had been engaged in the development of the naval store industry as a government agent since 1698, was commissioned Surveyor General of the Woods, and was required to instruct the inhabitants in the making of pitch and tar and other products, and to mark with the broad arrow of the British navy all trees that were to be reserved for the Crown and to keep a register of them. Bridger encountered much opposition from the colonists, who evidently considered the restrictions imposed by Parliament to be inimical to their own interests. The differences between the representative of the Crown and those who desired to exploit the forests for private gain were especially pronounced in New Hampshire, and an act passed in this royal province in 1708 imposed a penalty of one hundred pounds for every white pine or mast tree twenty-four inches or upward in diameter twelve inches from the ground, not private property, which should be cut or destroyed without royal license. The same penalty was prescribed for the unauthorized marking of any tree with the broad arrow.

Section 30 of a general fiscal act of 1709 declared that the premiums allowed by the act of 1704 for the importation of naval stores from the plantations in America were defective, and authorized Queen Anne to

expend ten thousand pounds for the subsistence and employment of persons and the purchase of materials, with a view to effecting the purposes of the earlier act.

In an act of 1710 the British Parliament referred to the vast quantities of masts and timber available near the shore in New England, New York, and New Jersey, and declared that after September 24, 1711, no person within New England, New York, or New Jersey should cut or destroy any white pine tree fit for masts that was twenty-four inches or upward in diameter twelve inches from the ground, and was not private property, under penalty of one hundred pounds. A penalty of five pounds was fixed for the offense of unlawfully marking a pine tree, in any of the colonies named, with the broad arrow of the navy. It appears from the language of the act that unscrupulous persons had been using the arrow in an unauthorized manner, to deter others from cutting trees on common lands and thus gain advantage to themselves.

In 1713 the act of 1704 was continued for a period of eleven years.

The influence of the royal authority on the legislative acts of the colonies is illustrated by a Massachusetts act passed on June 21, 1715, imposing a penalty of twenty shillings for each tree cut, barked, or boxed for the making of turpentine on any lands of the province, proprietors, townships, or particular persons, and providing for the forfeiture of all turpentine made; by a New Hampshire act of 1719, imposing a penalty of five pounds for the cutting of more than one box in a tree for the purpose of making turpentine, unless the trees were private property; and by an entry in the legislative records of New Jersey for November, 1719, making reference to the provisions of sections 16 and 17 of a parliamentary act of 1718, which forbade the payment of premiums except when the naval stores were of good quality, and prescribed an approved method of manufacture.

Section 2 of an act of 1721 sought to encourage the importation of lumber and all manner of timber products into Great Britain directly from the American colonies in British shipping, by removing all duties on such products thus imported for a period of twenty-one years from and after June 24, 1722. The act excepted masts, yards, and bowsprits, as to which provision had been made in an earlier act. Sections 3 and 4 provided for premiums on pitch, tar, and other products along the same lines as the act of 1704 and that of 1718; section 5 imposed new penalties for the offense of cutting or destroying trees fit for masts, not growing within the limits of any township, without the royal license; and section 6 repealed the part of the act of 1710 which fixed a penalty of one hundred pounds for the cutting of a white pine mast tree twenty-four inches or upward in diameter. The new penalties for cutting white pine

most trees or drawing them away, as established in section 5, were five pounds for trees twelve inches and under in diameter three feet from the ground, ten pounds for trees from twelve to eighteen inches in diameter, twenty pounds for trees from eighteen to twenty-four inches, and fifty pounds for trees twenty-four inches and upward. These penalties were applicable in Nova Scotia, as well as in all the colonies of New England, and in New York and New Jersey.

The opposition of the colonies to the navigation acts and the acts placing restrictions on the cutting of pine was neither appeased by the free trade provisions nor subdued by the penalties of the act of 1721, and the matter again claimed the attention of the British Parliament. An act of 1729 recited the prohibition against the cutting of white pine trees not growing within any township, contained in the act of 1721, declared that the said act had been evaded through the laying out of large tracts into townships since its passage, and enacted that from and after September 29, 1729, no one should, without royal license, cut or destroy any white pine trees that were not private property, notwithstanding that the said trees grew within the limits of any township already laid out or to be laid out. This act extended the area covered by the act of 1721 so as to include every province or country in America which belonged to Great Britain or should thereafter be acquired.⁵

Section 2 made the penalties of section 5 of the act of 1721 applicable to the cutting of white pine trees on lands not private property in any British territory of America, and to the cutting of white pine trees twenty-four inches or upward in diameter on any lands in the province of Massachusetts Bay that were not private property at the time of the reservation made in the charter issued by King William and Queen Mary in 1691.

The premiums allowed by this act for naval stores imported into Great Britain from the American colonies were considerably lower than those allowed by the act of 1704, which had been extended in 1713 but had expired in 1725. The requirements of the act of 1718 as to the quality of naval stores were reenacted, and the special encouragement to the manufacture of tar by an approved method as set out in the act of 1721 was continued. All naval stores shipped from the colonies were to be subject to the "regulations, restrictions and limitations" of the navigation acts requiring bond for shipment to Great Britain under penalties and forfeitures, and the premiums were limited to a period of thirteen years. These premiums were continued, however, by successive acts until June 24, 1781.

The provision of the act of 1721 which admitted wood, timber, and

⁵ For colonial views of act see New Jersey Archives, First Series, Vol. II, p. 176, 179-183. For enforcement, see Colonial Records of Connecticut, Vol. VII (1726-1735), p. 264; Provincial Papers of New Hampshire, Vol. IV, p. 563, 565; Vol. V, p. 11, 19, 97; Acts and Resolves, Province of Massachusetts Bay, Vol. III, p. 116, 326, 984; Vol. IV, p. 530, 974; Vol. V, p. 174.

lumber products from the colonies into Great Britain free of duty was continued by successive acts until September 29, 1778.

Although the terms of the earlier navigation acts requiring a shipment of all products of the colonies to Great Britain were evidently sufficiently broad to cover all kinds of timber or lumber products, through evasion and a loose construction of these acts the trade in such products between the colonies and foreign nations and their dependencies continued to thrive for a century following the Restoration. But there were frequent reports from the royal governors in America as to the great loss to British commerce which resulted from such foreign trade, and strong protest in England against the continuance of this trade. At last Parliament took action. Section 28 of a general duty act of 1763 enacted that from and after September 29, 1764, none of the timber products specified in the second section of the act of 1721 which had been grown, produced, or manufactured in any British colony of America were to be laden on any ship until bond was given to insure their transportation to no part of Europe except to ports of Great Britain, and section 29 required a warrant before such goods could be shipped to any other British colony or plantation.

An act of 1765 marked the adoption of a new policy. This provided for the payment of premiums on deals, plank, boards, and timber imported directly from the colonies into Great Britain in British ships. These premiums were to be paid at certain rates for a period of three years beginning on January 1, 1766, at lower rates for a second period of three years, and at still lower rates during a third period of three years. Section 22 of this act authorized the shipment of timber products from the colonies direct to Ireland, the Madeiras, the Azores, and any part of Europe south of Cape Finisterre.

An act of 1771 extended the provisions of the act of 1721 so that mahogany and every sort of unmanufactured timber product might be imported into Great Britain from any American colony, in British vessels, free of duty, and chapter 50 of the acts of the same year provided for bounties on white oak staves and heading imported into England direct from the colonies in British shipping. These two acts were doubtless intended as a relief to manufacturers in Great Britain, rather than as an encouragement to the colonies.

For a full century the colonies had chafed under the commercial repression of the navigation acts, and during three-fourths of that time the law had forbidden, under heavy penalties, the natural development of the timber industry. Smarting under the restraint of acts which they conceived to be unjust, the colonists had turned this way and that in search of avenues of escape from the offensive parliamentary enactments, and had become practiced in the art of legal evasion. The stamp

tax and the tea tax were but the last straws in a load that had weighed heavily on the patience of the colonists for years. While the bounties on naval stores beginning in 1704, and those on timber, lumber, and other wood products subsequent to January 1, 1766, as well as the freedom of such products from duty after June 24, 1772, may have seemed to Englishmen to be very favorable to the colonies, the restrictions as to cutting and the requirements that aimed at enforced shipment of all products to Great Britain were exceedingly irksome to the dependencies, and no inconsiderable proportion of the antipathy to British control that developed in America was among the manufacturers and shippers of timber products. It is doubtful whether any historian of the United States has recognized the important influence of British legislation interfering with the natural course of exploitation of American forests, in shaping the forces that led to the Revolution of 1775.

The shipment of lumber from Boston was stopped by the parliamentary act of 1774 closing that port until amends should be made to those who had suffered from the destruction of tea there in December, 1773. This act was followed by an act of 1775 placing an embargo on all commerce of the New England colonies until order should be restored therein. A later act of the same year extended this embargo to New Jersey, Pennsylvania, Maryland, Virginia, and South Carolina. A subsequent act of 1776 prohibited all trade with any of the thirteen colonies that joined in the Revolution. These war measures, of course, revoked the earlier acts remitting duties and affording bounties. The success of the Revolution ended the long struggle of the colonists against the efforts of the British Government to control the exploitation of American forests.

SPECIAL DEVELOPMENTS IN FOREST LAW DURING THE FIFTY YEARS PRECEDING THE FORMATION OF THE UNION

THE CONTROL OF SAND DUNES

On July 16, 1709, the Massachusetts Court, in compliance with the request of the inhabitants of a part of the neck of land that acts as a breakwater for Cape Cod Harbor, incorporated the town of Truro. This settlement appears to have been established shortly before that date, and there were only about forty families in Truro at the time of the authorization of a town government. The ambitious hopes of the people of Truro were doomed to speedy and bitter disappointment. The cutting of timber and firewood, and the grazing of stock on the commons along the shore, soon destroyed the balance of the forces of nature which had hitherto been established at the meeting line of the land and the sea. The dire consequences of the thoughtless acts of the settlers are revealed in the language of an act of the General Court passed on January 10, 1739, thirty years after the act of incorporation. The preamble to this act declared that because of the eating of the beach grass by cattle and horses along the shore of Eastern Harbor Meadows in the town of Truro, the sand was being driven, in storms and high winds, from the beach upon the meadows; that a great part of the meadowland was already buried and useless for grass, and that the whole was likely to be covered with sand if the drifting were not prevented in time. The act prescribed a penalty of forty shillings a head for neat cattle, horses, or mares turned at large to feed "between said meadows and Provincetown bounds." This act was limited to five years from the time of publication, but the evil was not easily undone and a similar act was passed on April 5, 1745, for a limited period. The later act was extended, by successive acts of 1751, 1755, 1760, 1770, 1776, 1779, and 1785, until November 1, 1797. Thus was the experience of the inhabitants of the western coast of France duplicated on the eastern shore of New England, and thus did Americans begin the attempt to control by legislation the baleful effects of drifting sand.

The act regarding the beaches of Truro was followed by one of December 28, 1739, directed toward the protection from drifting sand of the meadows of Plumb Island, in Ipswich Bay. The preamble to this act shows that the effects of forest fires, as well as of the cutting of trees and the feeding of animals, were recognized as a contributing cause to the encroachments of drifting sand. This act forbade the running at large on Plumb Island of any animals, under penalty of twenty shillings each for cattle, horses, or mares, and five shillings each for sheep or swine; imposed a penalty of ten pounds for firing the beach grass, bushes, or

shrubs; and provided a forfeit of ten shillings for each bush, shrub, or tree under six inches in diameter cut from the said beach or marsh. This act was limited to five years, but was repeatedly extended during the colonial and confederation period until November 1, 1797.

On January 9, 1741, a penalty of forty shillings per head was imposed for cattle, horses, or mares not owned by an inhabitant, found feeding on the lands of Provincetown. So serious had the drifting of sand become even then that this act appears to have had chiefly in view the protection of Cape Cod harbor. The waste was so complete that the exodus of inhabitants rendered it necessary to pass a special enabling act on November 11, 1743, to authorize the few remaining inhabitants to conduct local affairs as if they had sufficient population for a town, and by an act of April 5, 1745, the Governor and Council were authorized to draw on the public treasury of the colony for the amount necessary to maintain a pound for animals taken up in Provincetown in the enforcement of the law.

The act of January 9, 1741, also limited strictly the amount of stock which the inhabitants of Provincetown might themselves keep, and imposed penalties for the cutting of trees or bushes. This act was revived and continued by various successive acts until November 1, 1797.

Similar acts were passed for the protection of nearly a dozen other meadows and beaches during the colonial period, and several laws of this character were enacted during the confederation. An act of March 7, 1797, after the establishment of the Union, made many of these acts perpetual.

COOPERATIVE FORESTRY

From the time of the very earliest settlements in New England there existed sequestered commons which to all practical purposes were town communal forests. The year 1744, however, marks the introduction of an entirely new idea in the use and control of a common forest. This was nothing less than the organization of a number of private owners of forest land into a sort of corporation, for the purpose of managing their contiguous lands as a single unit, with the conscious intention of growing wood crops. On March 24, 1744, the General Court of the Province of Massachusetts Bay authorized any five proprietors of the lands embraced within Chebacco Woods, in the town of Ipswich, to apply to a justice of the peace, setting forth in writing their purpose to establish a common woods. The justice was then to make out warrants authorizing a call for a meeting of all proprietors, and if at this meeting two-thirds of all the proprietors, "reckoned by interest," should see meet, they might by a vote embody themselves into a society in which all the proprietors owning land within the proposed limits should be

included. The proprietors were to control and manage this wood like the proprietors of other common fields and woods. Any party thinking himself aggrieved by the action taken at the meeting could apply for relief, and a court of general session would hear the cause and give a judgment that should be binding. The act was unlimited as to the time that the society should continue.

On January 9, 1755, the Massachusetts Court authorized the proprietors of woodlands lying contiguous in the towns of Ipswich and Wenham, commonly known as "Wenham Great Swamp," to form an association like that authorized for Chebacco Woods. The object of this act is disclosed by the title, which read: "An Act for the securing of the growth and increase of a certain parcel of wood and timber in the towns of Ipswich and Wenham, in the county of Essex." The operation of this act was at first limited to ten years, but it was extended by successive acts until November 1, 1797. On March 7, 1797, this act, and another of March 6, 1793, covering other lands in the towns of Ipswich, Wenham, Beverly, and Manchester, were made perpetual.

USE OF RIVERS AS HIGHWAYS FOR LOGS, RAFTS, AND OTHER TIMBER

At a session of the General Assembly of Connecticut begun on May 14, 1752, an act was passed "to prevent secret Trespasses in taking up and disposing of Saw Mill Logs and other Timber, Shingles and Staves, floating or floated down the Connecticut River." Any person taking up such logs or timber "fairly marked," or shingles and staves which were bundled, was required, within one week, to "enter the same with the kind, bigness, length, and marks on the logs and timber, the number of bundles and the kind of the shingles and staves, and by whom taken up, and the place where they lye, with such clerk or clerks where strays and lost goods are by law to be entered, and shall let such logs, timber, shingles, and staves lye without disposing thereof, or any ways defacing the marks thereon, full six months after the first entering the same; on penalty of forfeiting and paying to the owner or owners.....the sum of ten shillings for every log or other stick of timber not exceeding thirty feet in length, and double the value of such shingles or staves and ten pounds for every log or other stick of timber which exceeds thirty feet in length." The person taking up the logs or timber was entitled to a fee of one shilling and two pence for every log or stick not over thirty feet long, and the same for a bundle of shingles or staves, and four shillings and two pence for every log or stick over thirty feet long; three pence of the reward for each log or stick to be given to the clerk for the recording. An owner of timber thus taken up and entered who took it away without paying the required fees, forfeited ten shillings for every log or stick

not over thirty feet long, the value of the shingles or staves, and five pounds for every log or stick over thirty feet long. If no owner appeared in six months, the person taking up the timber could convert it to his own use.

In October, 1771, a similar law was enacted to prevent the theft of timber products from the Windsor Ferry River, and the General Assembly of Connecticut held at New Haven in October, 1785, passed an act providing that any one who should stop, take up, or interrupt any mast, yard, or spar, over forty feet in length, floating down the Connecticut River, in Connecticut and above Middletown, without authority from the owner, should be liable for double damages to the owner.

An enactment of April 28, 1781, in Massachusetts, provided that if timber were left by spring floods, on any improved land adjoining the Connecticut River, the owner of the land was to cause to be recorded in the *Book of Records* of the town the marks and lengths of the said timber and the place where it was left. He was then entitled to one shilling as reasonable damages for each stick of timber so left, two pence of which amount was to go to the town clerk as a fee for recording. A proviso saved to the owner of the timber the right to cause it to be removed by the 15th day of May succeeding the time when it was left, without liability for damages. However, if the owner of the timber failed to have it removed within twelve months from the date of the recording with the town clerk, the timber was to be adjudged the property of the owner of the land. By the terms of this act all islands within the Connecticut River were excepted from its provisions, but an additional act of July 7, 1786, extended its provisions to "Smead's Island" in the Connecticut River.

New Jersey early recognized that it was necessary for the colonies to boldly break away from the view of the English common law, that only tidal rivers were navigable, and the important part which the development of her timber resources played in this movement appears in the words of an act passed by the General Assembly on August 20, 1755, as follows:

WHEREAS, The Transportation of Timber, Plank, Boards, Hay, and other Things to Market by Water, is a great Conveniency to the Inhabitants of this Colony, and the Preservation of those Advantages are highly worthy the Care of the Legislature,
Be it enacted, That if any Person or Persons without first obtaining an Act of the General Assembly for that Purpose, shall, after the Publication of this act, erect any Dam, Bank, Sluice or other Thing which shall obstruct or prevent the free and uninterrupted Navigation of any River, Creek, or Stream of Water within this Colony, which is used for the Navigation of Boats or Flats, or for the transporting of Hay, Plank, Boards, or Timber, or shall fall any Trees across such Creek, or throw Brush or other Filth in any Part thereof, between the Mouth thereof and the uppermost Place thereon, now or of late used as a Landing, he, she, or they so offending shall severally forfeit the Sum of Five Pounds, Proclamation Money.

On March 9, 1771, the Pennsylvania Legislature declared the Delaware and Lehigh Rivers and certain parts of the Neshaminy and Lechawaxin

Creeks to be "common highways.for vessels, boats, small craft and rafts of any kind whatsoever," and in another act of the same date made certain parts of the Susquehanna and Juniata Rivers and several smaller streams public highways for the same vessels. On April 13, 1782, the Monongahela and Youghiogheny Rivers were made highways "so far up as they or either of them have been or can be made navigable for rafts, boats and canoes, and within the bounds and limits of this State." The economic necessity that led to the overthrow by legislation of the common-law test of navigability is strikingly disclosed in the language of a Pennsylvania act of March 31, 1785, which read:

And WHEREAS, The extensive countries which are watered by the river Susquehanna, and the numerous branches thereof, are stocked with immense quantities of oak, pine and other trees, suitable for staves, heading, scantling, boards, planks, timbers for ship-building, masts, yards and bowsprits, from which great profit and advantage might arise to the owners thereof, if the same could be conducted in rafts and otherwise, down the said river, to the waters of Chesapeak, which trees must otherwise perish on the lands whereon they grew: For remedy whereof,

Sec. IV. *Be it enacted* by the authority, aforesaid, That the river Susquehanna shall be deemed and taken to be a public highway, in all parts thereof within this state, from the division line of the state of Maryland and this state upwards to the town of Northumberland, in the county of Northumberland, and thence, by and along each of the two great branches of the same river, which meet at the said town, in and throughout the whole length and breadth of the same river.

These acts marked the beginning of a policy which was extended to numerous rivers in Pennsylvania, New York, and New England by acts passed subsequent to the formation of the national Union, and eventually adopted in Central, Western, and Southern States.

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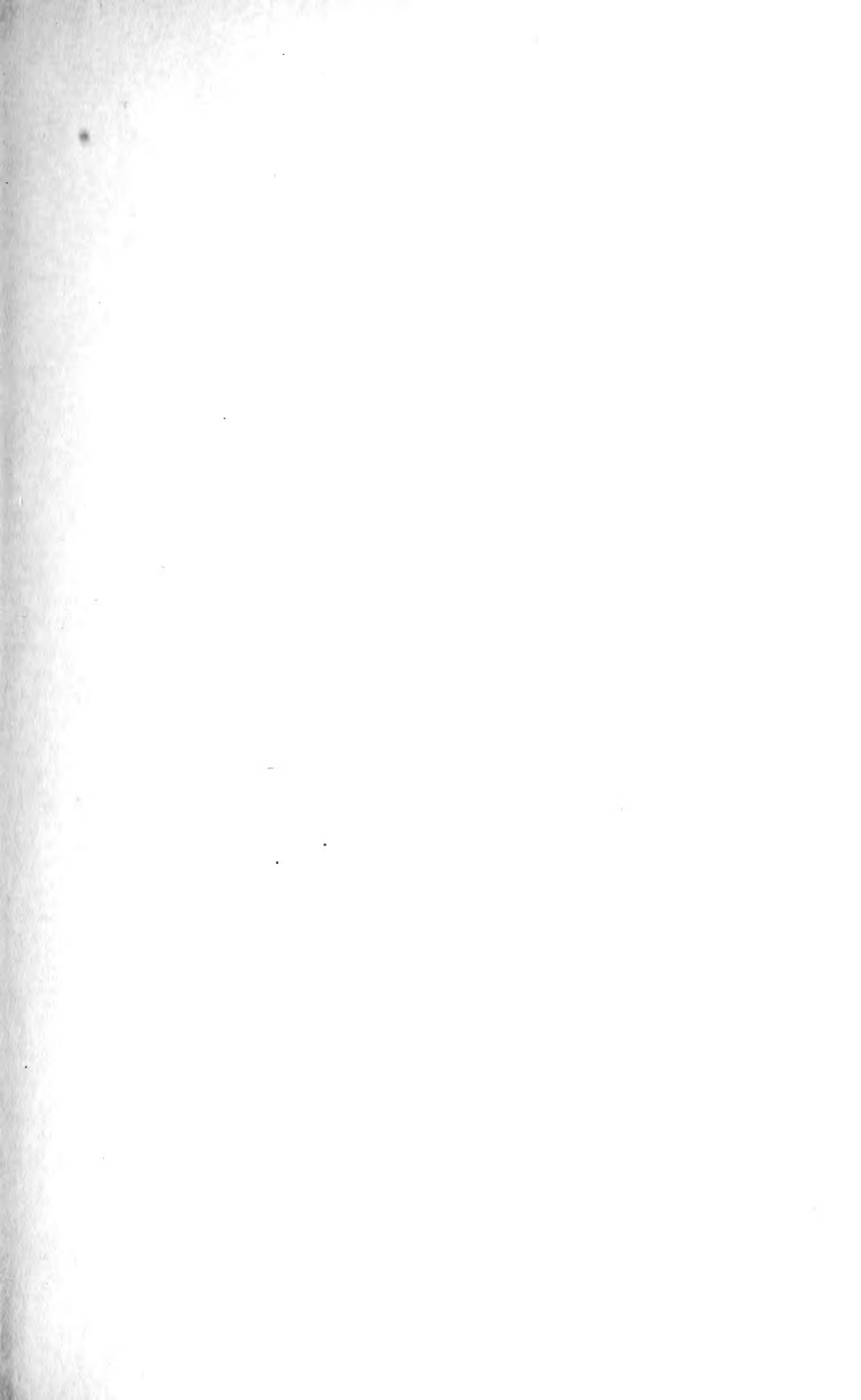
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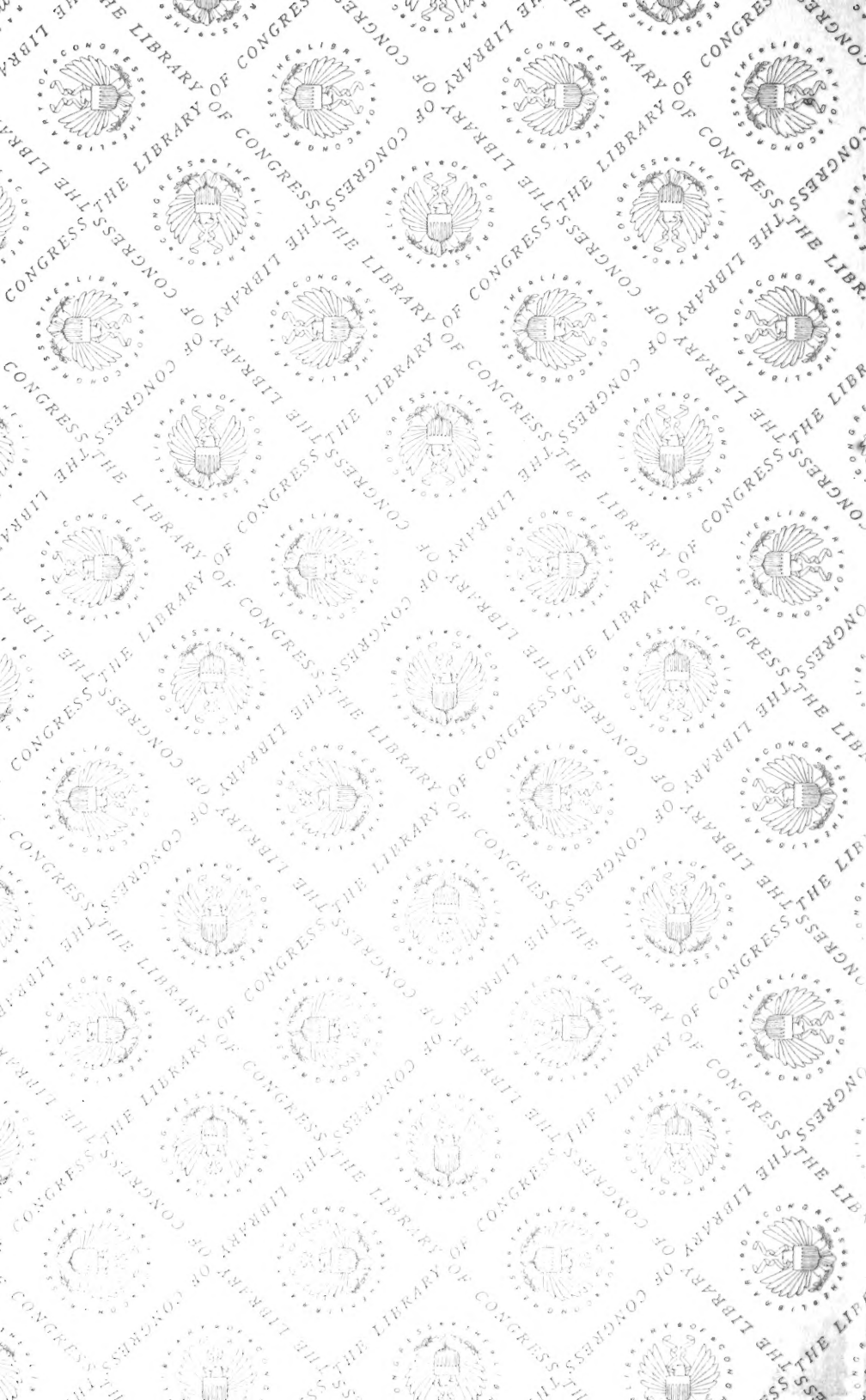
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